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Docket 86951F-P  
Customer No. 23387

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

**In re Application of**

**David C. Wilkins**

**TECHNIQUES FOR  
RECURSIVELY LINKING A  
MULTIPLY MODIFIED  
MULTIMEDIA ASSET TO AN  
ORIGINAL DIGITAL NEGATIVE**

**Serial No. 09/724,756**

**Filed 28 November 2000**

**Group Art Unit: 2623**

**Examiner: Mehrdad Dastouri**

I, Mary DiPaolo, hereby certify that this correspondence is being deposited today with the United States Postal Service as first-class mail in an envelope addressed to Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

*Mary DiPaolo*

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**APPEAL BRIEF PURSUANT TO 37 C.F.R. 1.192**

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## **APPELLANT'S BRIEF ON APPEAL**

Appellant hereby appeals to the Board of Patent Appeals and Interferences from the Examiner's Final Rejection of claims which was contained in the Office Action mailed February 20, 2004.

A timely Notice of Appeal was filed on June 15, 2004.

### **REAL PARTY IN INTEREST**

As indicated above in the caption of the Brief, the Eastman Kodak Company is the real party in interest.

### **RELATED APPEALS AND INTERFERENCES**

No appeals or interferences are known which will directly affect or be directly affected by or have bearing on the Board's decision in the pending appeal.

### **STATUS OF THE CLAIMS**

Appendix I provides a clean, double-spaced copy of the claims on appeal.

### **STATUS OF AMENDMENTS**

There are no pending amendments to the claims.

### **SUMMARY OF THE INVENTION**

The invention relates in its most general aspects to maintaining an original digital negative of a multi-media asset, 106 (p 10) at least first 302 and second 304 resultant multi-media assets (p 11) that are edited versions of the original digital negative, and first and second edit lists; (fig 2c, 2d) (p 11) and linking the first edit list 302 to the original digital negative 106 and linking the second edit list 304 to the first resultant multi-media asset 302. In this way, when an original digital negative is edited multiple times, the original digital negative is preserved and at least first and second resultant multi-media assets are also preserved together with first and second edit lists that produced the first

and second resultant multi-media assets. Finally, multiple edit lists are recursively linked to the resultant multi-media assets and then to the original digital negative (p 22).

#### **ISSUES FOR REVIEW BY THE BOARD**

The following issues are presented for review by the Board of Patent Appeals and Interferences:

1. Are Claims 1-3, 5, 7-12, 14 and 16-18 anticipated by Bown at U.S. 4,414,621
2. Are Claims 4, 6, 13, and 15 unpatentable over Bown under 35 U.S.C. 103(a).

#### **GROUPING OF CLAIMS**

Claims 1 2, 10, and 11 stand or fall together.

Claims 3, 5, 12, and 14 stand or fall together.

Claims 4, 6, 13, and 15 stand or fall together.

Claims 7, 8, 9, 16, 17, and 18 stand or fall together.

#### **ARGUMENTS**

The following argument addresses the rejection and applicant's arguments in response thereto with respect to each group of claims as set forth above.

As to Claims 1, 2, 10 and 11, the Examiner has rejected these claims as anticipated by Bown.

The Examiner characterizes Bown as showing a distributed network, a method of recursively linking a multiply-modified, multi-media asset to a digital negative of the multi-media asset but does not specifically point to anything in Bown that is said to be a distributed network or anything in Bown that discusses linking, let alone recursive linking.

As applicant understands Bown, which it must be noted relates to 1977 technology, it shows a plurality of editing stations having inputting devices and displays as shown in Figures 1 and 2 for example, whose aim is to simultaneously display the same image at multiple locations and allow a user at each location to make changes to the image with the changes being transferred by modem over a public communications network so that they appear substantially simultaneously on all other connected stations. The only examples of what is meant by a public communication network are a telephone network or a telex system. Note that in 1977, the internet as we now know it was in its extremely early stages, was administered by Darpa and was not available to the public. Its use was limited to government sponsored research groups.

As a first distinction, it must be noted that there is nothing in Bown that corresponds to applicant's digital negative. While the same image is displayed on each of the terminals of Bown, the patent doesn't describe how any image is transferred to the intelligent terminals 10 and most certainly does not describe transferring the figures over the public communications network which at the time was entirely too slow to transfer high resolution images. This is exactly the point of Bown. What Bown does describe is a method for sending graphic task instructions between the terminals so that a change made by a user using an input device at one terminal is immediately reflected on the display of all connected terminals. There is no mention in Bown of maintaining a digital negative and in fact, when a change is made on one terminal, the interactions are transmitted to the other terminals such that the same modification is performed simultaneously to the picture on each display (Column 3, lines 40-43). In Claim 1, limitation a) requires that the digital negative of the multi-media asset is modified to form a first resultant multi-media asset including at least a digital image that is at a lower resolution than the digital negative. In Bown, applicant believes that all of the displays have the same resolution. The Examiner points to Column 3, lines 33-50 and Column 6, lines 47-64 for these teachings. Applicant respectfully submits that there is nothing in either of these sections of Bown that even hints at the formation of a digital image that is at a lower resolution than the digital negative. In fact, the opposite is suggested, Bown repeats endlessly throughout his patent that, "the communication system in accordance with this invention maintains a common visual space, that is the visual picture viewed by

each operator is identical and any one of the operators can add to or other-wise modify the picture (Column 3, lines 54-59).

The description of the display generator in Column 6 of Bown also fails to show or suggest modifying a digital negative to form a resultant multi-media asset including a digital image that is at a lower resolution than the digital negative. The section referred to by the Examiner actually relates to processing graphic task instructions (GTI's) which are derived from the input interactive device for providing input instructions to control the display system and the input interactive device as described in Column 2, lines 25-27. The GTI's modify the pictures, they are not digital images at a lower resolution than the digital negative.

The next limitation (b) generating a first edit list based on the modification of the digital negative appears to be present in Bown. Bown does describe saving the GTI's to a table of interaction inputs so that if a new terminal is connected, it can catch up with the previously made edits.

The claim next requires associating the first edit list to the first resultant multi-media asset. This would make no sense with respect to Bown. The edits that Bown stores are the edits needed to duplicate changes already made to an image. Once the edits have been made, they are no longer needed and there would be no reason to associate the first edit list with the first multi-media asset and Bown does not suggest doing so. In fact, Bown doesn't mention associating his stored edits with anything. There is nothing in Bown that suggests any sort of association and there is certainly no suggestion of linking the first edit list to the digital negative of the multi-media asset.

Claim 1 goes on to require modifying the first resultant multi-media asset to form a second resultant multi-media asset and generating a second asset list based on modification of the first resultant multi-media asset. In Bown, there is no suggestion to store intermediate changes and therefore, there is no suggestion to generate a second edit list. The sole suggestion to form a list of display instructions refers to a single list. Recall that applicant's first resultant multi-media asset includes at least a digital image that is at a lower resolution than the digital negative. Since Bown has nothing corresponding to this, there would be no need for and no advantage to generating separate first and second edit lists. Further, because Bown has no digital image at a lower

resolution than the digital negative, he does not describe modifying this asset or creating the second edit list based on the modifications.

Finally, the claim requires associating the second edit list to the second resultant multi-media asset and linking the second edit list to the first resultant multi-media asset. As already described, Bown suggests no association or linking steps whatever and certainly doesn't suggest associating the edit list with the second resultant multi-media asset and linking the second edit list to the first resultant multi-media asset.

Applicant agrees that Bown can be fairly said to describe a system in which an image may be simultaneously edited by one or more users to a final form. Applicant might even be prepared to acknowledge that during the editing process, a series of intermediate images is created (but not stored). However, the claims require significantly more than this. The claims require forming a first resultant multi-media asset that includes a digital image that is at a lower resolution than the digital negative. There is nothing like this in Bown. The claims also require associating and linking first edit lists to different versions of the multi-media asset, specifically, associating the first edit list to the first resultant multi-media asset and linking the first edit list to the digital negative, and associating the second edit list to the second resultant multi-media asset and linking the second edit list to the first multi-media asset. This is completely absent from Bown who doesn't describe any associating or linking steps at all.

In fact, as applicant understands Bown, there is nothing that would even prevent users at different terminals from editing different images. While this wouldn't be useful, it appears to be entirely possible with Bown's invention and while the results would make no sense, the possibility that this might happen even more clearly demonstrates that there is no association or linking of edit lists with particular images as is required by applicant's claims.

As to Claims 3, 5, 12 and 14, these claims all add the limitation that a first edit list pointer is associated with the digital negative and the first edit list pointer points back to the first edit list (Claims 3 and 12) and associating a second edit list pointer to the second resultant digital image wherein the second edit list pointer points back to the second edit list (Claims 5 and 14). A pointer is a commonly understood term in computer science that consists of data that points to an address at which other data is located. In this case,

the first edit list pointer would be the address where the first edit list is stored and the second edit list pointer would be the address at which the second edit list is stored. Bown describes nothing like this. The Examiner refers to Column 4, lines 65-68, Column 5, lines 1-6, and Column 6, lines 1-8. Referring first to Column 4, Bown describes saving the user interactions, which can be analogized to applicant's edit list, in a table but there is no suggestion that the address of the edit list in the table be stored at all and more particularly, there is no suggestion that the address of the edit list in the table be associated with the digital negative (Claims 3 and 12) or that the address of a second edit be associated with a second resultant digital image.

Column 5 and Column 6 are similarly silent as to these limitations.

Claims 3, 5, 12 and 14 are separately patentable because of the absence of these pointers and of associating the pointers with the digital negative and the second resultant digital image.

As to Claims 4, 6, 13 and 15, these claims require embedding the first (Claims 4 and 13) and the second (Claims 6 and 15) edit lists in the first resultant multi-media asset (Claims 4 and 13) and the second resultant digital image (Claims 6 and 15). These claims are rejected under 35 U.S.C. § 103(a) as unpatentable over Bown. In essence, the Examiner argues that embedding information in a digital image (e.g. watermarking) is well known in image processing and therefore it would have been obvious to embed the first edit list in the first resultant digital image because it is a well-known procedure routinely implemented in image processing. Applicant, not surprisingly, agrees that Bown doesn't disclose these steps but disagrees that official notice can be taken without reference to any prior art. The Examiner's reference to watermarking is not understood. Is the Examiner alleging that a watermark is an edit list or equivalent to an edit list? Surely, this can't be the case. Applicant respectfully submits that the Examiner has taken official notice way beyond what is appropriate and that Claims 4, 6, 13 and 15 are separately patentable.

Finally as to Claims 7, 8, 9, 16, 17, and 18, these Claims relate to recursively repeating steps (e) through (h) of Claim 1 and Claim 10 respectively to form a set of hierarchically layered resultant multi-media assets and an associated set off hierarchically layered edit lists wherein a particular multi-media asset at an n'th level of the set of



hierarchically layered assets is an n'th multiply-modified multi-media asset and the set of hierarchically layered edits lists is applied to the digital negative.

The examiner argues that Bown shows these steps in column 2 lines 3 – 21 and 63 – 68, column 3 lines 1 – 9 and 54 – 59, column 4 lines 65 – 68 and column 5 lines 1 – 15. Referring to these sections in the order mentioned, column 2 lines 3-21 doesn't even mention edit lists.

Column 2 lines 63 – 68 doesn't mention edit lists.

Column 3 lines 1 – 9 doesn't mention edit lists.

Column 3 lines 54 – 59 does not mention edit lists.

Column 4 lines 65 – 68 does mention an edit list being saved in a transaction table but is silent as to hierarchically arranged edit lists associated with particular hierarchically arranged multi-media assets. Bown describes no more than a simple table that he calls a transaction table data from which can be used to bring a third party up to date if he enters a multi terminal conversation after it has begun. There is simply no description or suggestion of hierarchically arranged multi-media assets and edit lists as required by these Claims. The examiner's attempt at extension of Bown to cover these limitations is quite simply not supported by the disclosure of Bown itself. Accordingly, Claims 7, 8, 9, 16, 17, and 18 are separately patentable over Bown.

## **SUMMARY**


Bown relates to a problem quite different from the problem addressed by applicant and not surprisingly Bown lacks all the critical limitations of applicant's claims. Nothing about Bown is hierarchical and Bown describes no associations or linkages among a digital negative, a series of resultant multi-media assets and a series of edit lists. Bown does not describe any low resolution images and Bown doesn't describe applicant's hierarchical arrangement of images and edit lists

## **CONCLUSION**

For the above reasons, Appellant respectfully requests that the Board of Patent Appeals and Interferences reverse the rejection by the Examiner and mandate the allowance of Claims 1 –18.

Respectfully submitted,

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Enclosures



## APPENDIX I – CLAIMS ON APPEAL

1 In a distributed network, a method of recursively linking a multiply modified multimedia asset to a digital negative of the multimedia asset, comprising:

(a) modifying the digital negative of the multimedia asset to form a first resultant multimedia asset including at least a digital image that is at a lower resolution than the digital negative;

(b) generating a first edit list based upon the modification of the digital negative;

(c) associating the first edit list to the first resultant multimedia asset;

(d) linking the first edit list to the digital negative of the multimedia asset;

(e) modifying the first resultant multimedia asset to form a second resultant multimedia asset;

(f) generating a second edit list based upon the modification of the first resultant multimedia asset;

(g) associating the second edit list to the second resultant multimedia asset;  
and

(h) linking the second edit list to the first resultant multimedia asset.

2. A method as recited in claim 1, wherein the multimedia asset is the digital image.

3. A method as recited in claim 1, wherein the linking of the first edit list to the digital negative comprises:

associating a first edit list pointer with the digital negative wherein the first edit list pointer points back to the first edit list.

4. A method as recited in claim 1, wherein the linking of the second edit list to the digital negative comprises:

embedding the first edit list in the first resultant multimedia asset.

5. A method as recited in claim 1, wherein the linking of the second edit list to the first resultant multimedia asset comprises:

associating a second edit list pointer to the second resultant digital image wherein the second edit list pointer points back to the second edit list.

6 . A method as recited in claim 1, wherein the linking of the second edit list to the first resultant multimedia asset comprises:

embedding the second edit list in the second resultant digital image.

7 . A method as recited in claim 1, further comprising: recursively repeating (e) - (h) to form a set of hierarchically layered resultant multimedia assets and an associated set of hierarchically layered edit lists, wherein a particular multimedia asset at an nth level of the set of hierarchically layered multimedia assets is an nth multiply modified multimedia asset; and

applying a set of n hierarchically layered edit lists to the ~~original~~ digital negative to form the particular multimedia asset.

8 . A method as recited in claim 7, wherein the applying a set of n hierarchically layered edit lists to the digital negative is performed by a processor arranged to perform executable instructions.

9 . A method as recited in claim 8, wherein the processor is included in a host computer coupled to a distributed network of computers.

10 . In a distributed network, an apparatus for recursively linking a multiply modified multimedia asset to a digital negative of the multimedia asset, comprising:

(a) a means for modifying the original negative of the multimedia asset to form a first resultant multimedia asset including at least a digital image that is at a lower resolution than the digital negative;

(b) a means for generating a first edit list based upon the modification of the digital negative;

(c) a means for associating the first edit list to the first resultant multimedia asset;

(d) a means for linking the first edit list to the digital negative of the multimedia asset;

(e) a means for modifying the first resultant multimedia asset to form a second resultant multimedia asset.

(f) a means for generating a second edit list based upon the modification of the first resultant multimedia asset;

(g) a means for associating the second edit list to the second resultant multimedia asset; and

(h) a means for linking the second edit list to the first resultant multimedia asset.

11 . An apparatus as recited in claim 10, wherein the multimedia asset is the digital image.

12 . An apparatus as recited in claim 10, further comprising:

a means for associating a first edit list pointer with the digital negative wherein the first edit list pointer points back to the first edit list.

13 . An apparatus as recited in claim 10, further comprising: a means for embedding the first edit list in the first resultant digital image.

14 . An apparatus as recited in claim 10, further comprising:

a means for associating a second edit list pointer to the second resultant digital image wherein the second edit list pointer points back to the second edit list.

15 . An apparatus as recited in claim 10, further comprising:

a means for embedding the second edit list in the second resultant digital image.

16 . An apparatus as recited in claim 10, further comprising: a means for recursively repeating (e) - (h) to form a set of hierarchically layered resultant multimedia assets and an associated set of hierarchically layered edit lists, wherein a particular multimedia asset at an nth level of the set of hierarchically layered multimedia assets is an nth multiply modified multimedia asset; and

a means for applying a set of n hierarchically layered edit lists to the digital negative to form the particular multimedia asset.

17 . An apparatus as recited in claim 16, wherein the applying a set of n hierarchically layered edit lists to the digital negative is performed by a processor arranged to perform executable instructions.

18 . An apparatus as recited in claim 17, wherein the processor is included in a host computer coupled to a distributed network of computers.



PTO/SB/21 (02-04)

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**TRANSMITTAL  
FORM**

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<b>TRANSMITTAL FORM</b> (to be used for all correspondence after initial filing)	Application Number	09/724,756
	Filing Date	November 28, 2000
	First Named Inventor	Wilkins, David
	Art Unit	
	Examiner Name	
Total Number of Pages in This Submission	Attorney Docket Number	11086.000755

**ENCLOSURES (check all that apply)**

<input checked="" type="checkbox"/> Fee Transmittal <input checked="" type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment/Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavit/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Response to Missing Parts/ Incomplete Application <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____	<input type="checkbox"/> After Allowance communication to Group <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input checked="" type="checkbox"/> Appeal Communications to Group <b>Appeal Brief</b> <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below): postcard
<b>Remarks</b>		

**SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT**

Firm or Individual name	Stephen B. Salai, HARTER, SECREST & EMERY LLP		
Signature			
Date	August 16, 2004		

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# **FREE TRANSMITTAL** **for FY 2004**

Effective 1/1/2003. Patent fees are subject to annual revision.

☐ Applicant claims small entity status. See 37 CFR 1.27TO: **AMOUNT OF PAYMENT** \$330.00**Complete if Known**

Application Number **09/724,756**  
 Filing Date **November 28, 2000**  
 First Named Inventor **Wilkins, David**  
 Examiner Name  
 Art Unit  
 Attorney Docket Number **11086.000755**

**METHOD OF PAYMENT (check all that apply)**

☒ Check ☐ Credit card ☐ Money Order ☐ Other ☐ None

☒ Deposit Account:

Deposit  
Account  
Number

03-3875

Deposit  
Account  
Name

Harter, Secrest &amp; Emery LLP

**The Director is authorized to: (check all that apply)**

☐ Charge fee(s) indicated below ☒ Credit any overpayments  
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**FEE CALCULATION****1. BASIC FILING FEE**

Large Entity		Small Entity		Fee Description	Fee Paid
Code	Fee (\$)	Code	Fee (\$)		
1001	770	2001	385	Utility filing fee	\$0.00
1002	340	2002	170	Design filing fee	
1003	530	2003	265	Plant filing fee	
1004	770	2004	385	Reissue filing fee	
1005	160	2005	80	Provisional filing fee	

**SUBTOTAL (1)** (\$) \$0.00**2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE**

		Extra Claims	Fee from below	Fee Paid
Total Claims	<input type="text"/>	-20**= <input type="text"/>	x 18	= <input type="text"/>
Independent Claims	<input type="text"/>	-3**= <input type="text"/>	x 86	= <input type="text"/>
Multiple Dependent	<input type="text"/>			

Large Entity		Small Entity		Fee Description
Code	Fee (\$)	Code	Fee (\$)	
1202	18	2202	9	Claims in excess of 20
1201	86	2201	43	Independent claims in excess of 3
1203	290	2203	145	Multiple dependent claim, if not paid
1204	86	2204	43	**Reissue independent claims over original patent
1205	18	2205	9	**Reissue claims in excess of 20 and over original patent

**SUBTOTAL (2)** (\$) 0

\*\*or number previously paid, if greater; For Reissues, see above

**FEE CALCULATION (continued)****3. ADDITIONAL FEES**


Large Entity		Small Entity		Fee Description	Fee Paid
Code	Fee (\$)	Code	Fee (\$)		
1051	130	2051	65	Surcharge - late filing fee or oath	
1052	50	2052	25	Surcharge - late provisional filing fee or cover sheet	
1053	130	1053	130	Non-English specification	
1812	2,520	1812	2,520	For filing a request for <i>ex parte</i> reexamination	
1804	920*	1804	920*	Requesting publication of SIR prior to Examiner action	
1805	1,840*	1805	1,840*	Requesting publication of SIR after Examiner action	
1251	110	2251	55	Extension for reply within first month	
1252	420	2252	210	Extension for reply within second month	
1253	950	2253	475	Extension for reply within third month	
1254	1,480	2254	740	Extension for reply within fourth month	
1255	2,010	2255	1,005	Extension for reply within fifth month	
1401	330	2401	165	Notice of Appeal	
1402	330	2402	165	Filing a brief in support of an appeal	330.00
1403	290	2403	145	Request for oral hearing	
1451	1,510	1451	1,510	Petition to institute a public use proceeding	
1452	110	2452	55	Petition to revive - unavoidable	
1453	1,330	2453	665	Petition to revive - unintentional	
1501	1,330	2501	665	Utility issue fee (or reissue)	
1502	480	2502	240	Design issue fee	
1503	640	2503	320	Plant issue fee	
1460	130	1460	130	Petitions to the Commissioner	
1807	50	1807	50	Processing fee under 37 CFR 1.17(q)	
1806	180	1806	180	Submission of Information Disclosure Stmt.	
8021	40	8021	40	Recording each patent assignment per property (times number of properties)	
1809	770	2809	385	Filing a submission after final rejection (37 CFR 1.129(a))	
1810	770	2810	385	For each additional invention to be examined (37 CFR 1.129(b))	
1801	770	2801	385	Request for Continued Examination (RCE)	
1802	900	1802	900	Request for expedited examination of a design application	

Other fee (specify) \_\_\_\_\_

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**SUBTOTAL (3)** (\$) 330.00**SUBMITTED BY**

Complete (if applicable)

Name (Print/Type)	Stephen B. Salai	Registration No. (Attorney/Agent)	26,990	Telephone	585-232-6500
Signature		Date	August 16, 2004		

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